

JOSEPH LENNON  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

08 CV 54517

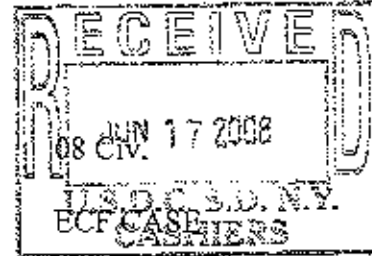
-----X  
CONMARK BUNKER (CHINA) LTD.,

Plaintiff,

- against -

SWELLCHIEF SHIPPING CO. LTD.,

Defendant.  
-----X



**VERIFIED COMPLAINT**

Plaintiff, CONMARK BUNKER (CHINA) LTD., (hereinafter referred to as "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendant, SWELLCHIEF SHIPPING CO. LTD., (hereinafter referred to as "Defendant") alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333.
2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with a principal place of business in Shanghai, China.
3. Upon information and belief, Defendant was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with a principal place of business in Hong Kong.
4. By a maritime contract for the purchase and sale of bunker fuel, Defendant agreed to purchase a quantity of fuel from Plaintiff, which fuel Plaintiff in fact supplied to Defendant pursuant to Defendant's instructions.

5. Specifically, pursuant to the parties' contract Plaintiff made fuel deliveries to Defendant as follows pursuant to an invoice dated April 17, 2008 (attached as Exhibit 1) and an invoice dated April 30, 2008 (attached as Exhibit 2) :

- a. Supply Date 4/16/08, Port of Hong Kong: \$136,809.00;
- b. Supply Date 4/29/08, Port of Hong Kong: \$43,873.20.

The total principal amount owed by Defendant to Plaintiff for these two fuel deliveries is \$180,682.20.

6. To date, despite due demand by Plaintiff, Defendant has paid no part of the \$180,682.20 currently owed.

7. Notwithstanding that Plaintiff fully performed its obligations under the contract, Defendant has breached the contract inasmuch as Defendant, while not disputing the amount due, has failed to pay Plaintiff the amount due.

8. Plaintiff has sustained damages in the total principal amount of \$180,682.20, exclusive of interest, costs and attorneys' fees which are recoverable under the contract's terms.

9. Plaintiff expects to obtain a judgment from this Court to recover the following amounts from Defendant:

|              |  |                     |
|--------------|--|---------------------|
| A.           | Principal claim:                                 | \$180,682.20;       |
| B.           | Three years interest at 7% compounded quarterly: | \$41,816.96         |
| C.           | Recoverable attorneys' fees:                     | \$15,000.00.        |
| <b>Total</b> |  | <b>\$237,499.16</b> |

10. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during

the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant.

11. The Plaintiff seeks an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, inter alia, any assets of the Defendant held by any garnishees within the District for the purpose of obtaining personal jurisdiction over the Defendant and to secure the Plaintiff's claim as described above.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint failing which default judgment be entered against it;

B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of **\$237,499.16** belonging to, due or being transferred to, from, or for the benefit of the Defendant, including but not limited to such property as may be held, received or transferred in Defendant's name or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishees to be named, and


that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

C. That this Court enter judgment against the Defendant in the amount of \$237,499.16 plus the costs and reasonable attorneys' fees incurred in the prosecution of this action;

D. That Plaintiff be afforded such other and further relief as warranted by justice.

Dated: June 16, 2008  
New York, NY

The Plaintiff,  
CONMARK BUNKER (CHINA) LTD.,

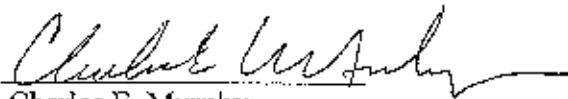
By:   
Charles E. Murphy (CM 2125)  
LENNON, MURPHY & LENNON, LLC  
The GrayBar Building  
420 Lexington Ave., Suite 300  
New York, NY 10170  
(212) 490-6050 – phone  
(212) 490-6070 – fax  
ccm@lenmur.com

**ATTORNEY'S VERIFICATION**

State of New York     )  
                              )  
County of New York    )     ss.:   New York City

1.     My name is Charles E. Murphy.
2.     I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3.     I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the Plaintiff.
4.     I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5.     The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6.     The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:       June 16, 2008  
              New York, NY

  
Charles E. Murphy

# EXHIBIT 1



# Conmark Bunker

上海创能国际船舶货物运输代理有限公司

M.V. MCP HARBURG  
AND/OR OWNERS/CHARTERERS  
SWELLCHEF

Floor 6, No.55  
Ling Ping Road(N),  
Shanghai,  
China

Attn: Mr Wang

DATE OF INVOICE : 08-04-17

INVOICE NO : 080411C

DATE OF SUPPLY : 08-04-16

PORT: HONG KONG WA 1

| Quantity supplied | Quality/description | price/per  | Invoice amount |
|-------------------|---------------------|------------|----------------|
| 243.00 MT         | FO180               | 563.00     | 136,809.00     |
| Your VAT No.      |                     | VAT Amount | USD 0.00       |
| Our VAT No.       |                     | Total      | USD 136,809.00 |

The prices are excl.all taxes and/or other fees.

TERMS OF PAYMENT: 30 days from date of supply

With value date not later than DUE DATE or previous working day when it is a holiday.

Late payment is charged with an interest of the invoiced amount  
of 2% per, as per our Terms and Conditions.

All bank charges are for the remitter's account

**DUE ON 15-MAY-2008 AT THE LATEST**

BENEFICIARY BANK : THE HONGKONG AND SHANGHAI BANKING CORPORATION LTD.  
BENEFICIARY : CONMARK MARINE OIL(ASIA)LIMITED  
ACCOUNT NO. : 033-844200-838 (USD ACCOUNT)  
SWIFT CODE : HSBCHKHHHKH



上海创能国际船舶货物运输代理有限公司

Conmark Bunker (China) Ltd.

地址: 上海市浦东新区浦东南路360号新上海国际大厦21楼G座

Address: Flat G, 2/F., New Shanghai International Tower, 360 South Pudong Road, Pudong, Shanghai 200120, China

电话Tel: 86(021)58883799 58885833

传真Fax: 86(021)58887578

**HARBOURLUCK**

Harbour Luck Asia Ltd

**BUNKER DELIVERY NOTE**

MARPOL Annex VI compliant

|   |  |  |
|---|--|--|
| Port of Bunkering<br><b>HONG KONG</b>         |  | Name of Receiving Vessel<br><b>MCD HARBURG</b> |
| Location<br><b>WA1</b>                        |  | IMO No. of Receiving Vessel<br><b>9371995</b>  |
| Commencement Date (D-M-Y)<br><b>16-4-2008</b> | Name of Bunker Barge<br><b>DRAGON FORD</b> |  |

| PRODUCT    | PRODUCT INFORMATION |                         |                 |                    | QUANTITY                 |                    |               |
|------------|---------------------|-------------------------|-----------------|--------------------|--------------------------|--------------------|---------------|
|            | Density at 15°C     | Viscosity at 50°C (cSt) | Sulphur (% m/m) | Observed Temp (°C) | Volume (L) Observed Temp | Volume (L) at 15°C | Metric Ton    |
| <b>MED</b> | <b>0.9893</b>       | <b>180</b>              | <b>2.21</b>     | <b>24</b>          | <b>254395</b>            | <b>252817</b>      | <b>243.00</b> |
|            |                     |                         |                 |                    |                          |                    |               |

| TIME FACTS                      | REPRESENTATIVE SAMPLE                                     |
|---------------------------------|---|
| Barge Arrived<br><b>13=15</b>   | Seal number of samples retained by the respective parties |
| Barge Alongside<br><b>13=30</b> | Vessel <b>725461</b> <b>725462</b><br>(MARPOL Annex VI)   |
| Pumping Started<br><b>14=05</b> | Bunker Barge <b>725463</b>                                |
| Pumping Stopped<br><b>17=30</b> | Surveyor, if any <b>/</b>                                 |

| REMARK            |                       |
|-------------------|-----------------------|
| From Bunker Barge | From Receiving Vessel |
|                   |                       |

| ACKNOWLEDGEMENT           |  |
|---------------------------|--|
| Supplier's Representative | Vessel's Representative  |
| Name : <b>文</b>           | Name : <b>J. HING PIS</b>  |
| Title : Cargo Officer     | Title : Master <input checked="" type="checkbox"/> CE <input type="checkbox"/> 1 <sup>st</sup> E <input type="checkbox"/> 2 <sup>nd</sup> E <input type="checkbox"/> |



# EXHIBIT 2



# Conmark Bunker

上海创能国际船舶货物运输代理有限公司

M.V. NAN FENG SHAN  
AND/OR OWNERS/CHARTERERS  
SWELLCHEF

Floor 6, No.55  
Ling Ping Road (N),  
Shanghai,  
China  
Attn: Mr Wang

DATE OF INVOICE : 08-04-30

INVOICE NO. : 080429B

DATE OF SUPPLY : 08-04-29

PORT: HONG KONG SEA

| Quantity supplied | Quality/description | price/per | Invoice amount |
|-------------------|---------------------|-----------|----------------|
| 10.00 MT          | MGO                 | 1086.00   | 10,860.00      |
| 30.02 MT          | ISO80               | 660.00    | 33,013.20      |

|              |            |     |           |
|--------------|------------|-----|-----------|
| Your VAT No. | VAT Amount | USD | 0.00      |
| Our VAT No.  | Total      | USD | 43,873.20 |

The prices are excl. all taxes and/or other fees.

TERMS OF PAYMENT: 30 days from date of supply  
With value date not later than DUE DATE or previous working day when it is a holiday.  
Late payment is charged with an interest of the invoiced amount  
of 2% p.a.m. as per our Terms and Conditions.  
All bank charges are for the remitter's account.



**DUE ON 28 MAY 2008 AT THE LATEST**

BENEFICIARY BANK: THE HONGKONG AND SHANGHAI BANKING CORPORATION LTD.  
BENEFICIARY: CONMARK MARINE OIL (ASIA) LIMITED  
ACCOUNT NO.: 033-844200-838 (USD ACCOUNT)  
SWIFT CODE: HSHCHGHKHKH

上海创能国际船舶货物运输代理有限公司

Conmark Bunker (China) Ltd.

地址: 上海市浦东新区浦东大道360号上海国际大厦21楼9座

Address: Flat G, 2/F, New Shanghai International Tower, 360 South Pudong Road, Pudong, Shanghai 200120, China

电话Tel: 86(021)58883799 58885833

传真Fax: 86(021)58887578

2008 Apr 23 3:45PM HP LASERJET FAX

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**HARBOURLUCK**

Harbour Luck Asia Ltd

**BUNKER DELIVERY NOTE**



MARPOL Annex VI compliant

|                                       |  |  |
|---------------------------------------|--|--|
| Port of Bunkering<br><b>HONG KONG</b> |  | Name of Receiving Vessel<br><b>NAN FENG SHAN</b> |
|                                       |  | IMO No. of Receiving Vessel<br><b>8891285</b>    |
| Location<br><b>奇力2</b>                | Commencement Date (D-M-Y)<br><b>29-04-2008</b> | Name of Bunker Barge<br><b>HKE PIONEER</b>       |

| PRODUCT | PRODUCT INFORMATION |                         |                 |                   | QUANTITY                 |                    |            |
|---------|---------------------|-------------------------|-----------------|-------------------|--------------------------|--------------------|------------|
|         | Density at 15°C     | Viscosity at 50°C (cSt) | Sulphur (% m/m) | Observed Temp(°C) | Volume (L) Observed Temp | Volume (L) at 15°C | Metric Ton |
| MFO     | 0.9688              | 80                      | 2.32            | 24                | 51958                    | 51635              | 50.02      |
|         |                     |                         |                 |                   |                          |                    |            |

| TIME FACTS                      | REPRESENTATIVE SAMPLE                                     |
|---------------------------------|---|
| Barge Arrived<br><b>14:00</b>   | Seal number of samples retained by the respective parties |
| Barge Alongside<br><b>14:15</b> | Vessel <b>725662</b> <b>725661</b><br>(MARPOL Annex VI)   |
| Pumping Started<br><b>14:55</b> | Bunker Barge <b>725663</b>                                |
| Pumping Stopped<br><b>15:30</b> | Surveyor, if any <b>/</b>                                 |

| REMARK            |                       |
|-------------------|-----------------------|
| From Bunker Barge | From Receiving Vessel |
|                   |                       |

| ACKNOWLEDGEMENT  |   |
|--|---|
| Supplier's Representative<br> | Vessel's Representative<br>                         |
| Name :<br>Title : Cargo Officer  | Name :<br>Title : Master <input type="checkbox"/> CE <input type="checkbox"/> 1st <input type="checkbox"/> 2nd <input type="checkbox"/> |

2008 Apr 29 3:45PM HP LASERJET FAX

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**HARBOURLUCK**

Harbour Luck Asia Ltd

**BUNKER DELIVERY NOTE**


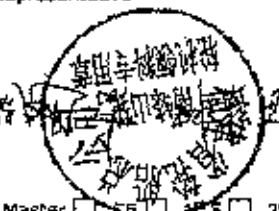
MARPOL Annex VI compliant

|                                       |  |  |
|---------------------------------------|--|--|
| Part of Bunkering<br><b>HONG KONG</b> |  | Name of Receiving Vessel<br><b>NAV FENG SHAN</b> |
|                                       |  | (IMO No. of Receiving Vessel)<br><b>8891285</b>  |
| Location<br><b>香港</b>                 | Commencement Date (D-M-Y)<br><b>29-04-2008</b> | Name of Bunker Barge<br><b>UNION LINK 18</b>     |

| PRODUCT | PRODUCT INFORMATION |                         |                 |                   | QUANTITY                 |                    |            |
|---------|---------------------|-------------------------|-----------------|-------------------|--------------------------|--------------------|------------|
|         | Density at 15°C     | Viscosity at 50°C (cSt) | Sulphur (% m/m) | Observed Temp(°C) | Volume (L) Observed Temp | Volume (L) at 15°C | Metric Ton |
| MG0     | 0.8681              | 5.5                     | 0.4             | 24                | 11610                    | 11525              | 10.00      |
|         |                     |                         |                 |                   |                          |                    |            |

| TIME FACTS                      | REPRESENTATIVE SAMPLE                                     |
|---------------------------------|---|
| Barge Arrived<br><b>14:00</b>   | Seal number of samples retained by the respective parties |
| Barge Aligned<br><b>14:15</b>   | Vessel <b>725665</b> <b>725664</b><br>(MARPOL Annex VI)   |
| Pumping Started<br><b>14:40</b> | Bunker Barge <b>725770</b>                                |
| Pumping Stopped<br><b>14:55</b> | Surveyor, if any <input checked="" type="checkbox"/>      |

| REMARK            |                       |
|-------------------|-----------------------|
| From Bunker Barge | From Receiving Vessel |
|                   |                       |

| ACKNOWLEDGEMENT  |   |
|--|---|
| Supplier's Representative  | Vessel's Representative   |
| <br>Name :<br>Title : Cargo Officer | <br>Name :<br>Title : Master <input type="checkbox"/> 1st E <input type="checkbox"/> 2nd E <input type="checkbox"/> |